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PUBLISHED AND EDITED BY HENRY M. WHITNEY. GEORGE H. DOLE, ASSOCIATE EDITOR.

Supreme Court of the Bawailan Islands-April Term, 1877.

WEDNESDAY, MAY 23, 1877.

CHAS. C. HARRIS vs. H. A. P. CARTER, J. M. SMITH. and J. O. DOMINIS, Commissioners of Crown Lands.

This is an action of ejectment. The complaint was filed January 20th, 1875, and on the same day service was admitted and the jury waived by the then Commissioners of Crown Lands-J. S. Walker R H Stanley and J. O. Dominis.

On the 20th January, 1877, the present Commissioners were substituted as defendants on motion of the plaintiff. The plea of the general issue was then filed by plaintiff's consent, and the case argued and submitted on the 23rd of

January.

The plaintiff claims title to the Ili of "Kawailoa," in the Abupuas of Kailus, Koolaupoko, Oahn, and to the Ilis of "Kaluspuhi," "Halekoe," " Kuou," " Watkalua," " Kesahala," " Kuhalekauwila," and " Kanohouluiwi," in the Abupusa of Kaneohe, Koolaupoko, Oahu; and shows

n evidence as follows:
(1.) The "Mahele" or "Great Division" of of the Ahopeans of Kailun and Kaneobe to Hakaleleponi Kalama, the Queen of Kame

(2.) Awards of the Land Commission to Queen Kalama, dated May 20th, 1854, issued April 13th, 1855, upon claim No. 4452, designated as Apanas 12 and 13, for the Ahupquas of Kailua

and Kuneohe respectively.
(3) Will of Kamehameha III., who died December 15th, 1854, dated the 2nd day of April, 1853, admitted to probate January 27th, 1855. in which the said Ahapmans of Kailua and Kaneohe are, with other lands, devised in fee simple to Queen Kalama. (4.) The admission that Queen Kalama died intestate 20th September, 1870, leaving as her

heir at law His Highness Chas. Kanaina. (50 Deed of Charles Kausina to the plaintiff sessed at the time of her decease in and to the Ahapmas of Kailua and Kancobe.

The plaintiff claims that, by virtue of the entitled at the time of her decease to the whole of the Ahupusas of Kailua and Kaneobe, and to the aforesaid His of Kawailon in the Ahupuan of Kullus afore-and, and the said His of Kaluspuhi, ilulekou, Kuou, Waikalga, Kenahala, Kahalekauwila, and Kanohouluiwi in the Ahapuan of Kaneohe and which are included in and are part of the said Ahupuaas, and which by deed of C. Kansina are conveyed to the plaintiff.

It is clear to me that the plaintiff's title is no affected by the fact that the Mahele of 1848 of these lands was made by the King to his own wife. Kulama was Kamehameha Third's Queen. but she was also his subject, and so far us this Mahele is concerned could take direct from the King, her husband, like any other chief, It is also clear that the title to the Ahupuans

of "Ksilus" and "Kaneobe" is in the plaintiff. The principal question remains to be considered, viz : Do the grants of these Ahapunus include and carry with them the so called " Crown His." above enumerated? I suppose it will not be questioned that the grant of a tract of land which is described either by survey or in any include all that is within its boundaries. This may be illustrated thus: If a man sells his houselot, the conveyance will be held to include the fountain or the garden which is in the house-lot. So a grant of an Ahupma will include the grantor's fish-ponds or kalo-patches lying within 402, both inclusive.

he Ahupuns. The argument is made that an Iliama is a portion or subdivision of an Ahupuna, and therefore the grant of an Ahupuna includes the His lying within its circumscribing boundaries. And this reasoning is applied to the present case as fullows : When Kamehameha granted, at the great | its faithful observance forever." Mahele, the Ahupuas of Kaneohe to Kalama, he granted whatever made up that Ahupusa; that is, all the lis within it, not granted to other

ed by the Board of Commissioners to Quiet Lana Titles" (2 Haw. Statutes, p. 81, et seq.) fur-TIMBER FOR SHIP USE nish us a clear exposition, and in the investiga-tion of the latter I have been much aided by the decision of the full court in 1864, "in re Estate of His Majesty Kamehameha IV," written by the late Mr. Justice Robertson, our best au-

thority on such matters. It seems that after long and patient investigation in which the patriotism of the King and Chiefs was often severely tested, it was finally settled and fully established that there were but three classes of persons having vested rights in the lands of this kingdom. First, the King; second, the landlord (comprising the Chiefs and Konobikis); third, tenants (who afterwards be-WHITE LEAD and ZINC! came "Kuleana-men"). But as each of these classes had rights in most of the lands, in a descending scale, as it were, it became necessary to separate and define the rights of each—or, rather, Wall Paper and Border to partition in severalty to each one his proper share of the whole. It was finally settled that the King should allow the landlord (2ud class) one third; the tenants (3rd class) one third and retain himself (1st class) one third.

"Mahele Book," which was put in evidence and which I have carefully studied, is to my mind in effect and substance the record of the various deeds of quit-claim between the King on the one hand and the various Chiefs and landholders on the other, of their several interests, each to the other, in the various lands of the kingdom.

After all these preliminaries were settled, the work began, and the first Mahele was made be tween the late Princess Victoria Kumamala (by her guardians) and the King on the 27th day of January, 1848. This work continued on from one Chief and Konobiki to another with the King, taking up one island after another and going on regularly from day to day, and the last Mabele was signed on the 7th March, 1848. As an example I copy here the transaction be ween Queen Kalama and the King, on one page

of the Mahele book (to wit, 146): " Ко Каменамена III. Na Afna. Ahupuna, Kalona. Mokupuni, 28 different Ilis in Waliuku. Pauli Kom. Mani. Ke as uk: nei an i keta Mahele, ua maikai. Ko ka Moi us Aina i kakauia maluna. Aohe o'u

kuleana maloko. "HAZALELEPONI KAPAKUHAILI. [L.S.] Hale Alii, 11 Fehr., 1848."

(Translation of the above.) "I hereby agree to this division; it is satisfactory. The lands above inscribed are the King's; I have no right to them.

HAZALELEPONI KAPAKUHAILI. [L.S.] Palace, 11 Febr., 1848." On the opposite page, (148): KO HAZALELEPONI KALAMA.

Waisahalulu Honolulu Kona Kalisa Ahupusa Kooluup Hakipuu Kooluup Ke se aku nei su i keia Mahele, na maikai. No Hazaleleponi Kalama na aina i kakauta maluna ; na ne ia 'ku e hiki ke lawe aku imua o ka Poe

KAMEHAMEHA. [L.S.] Hale Alti, 11 Feb., 1848.

(Translation.) "I hereby agree to this division; it is satisfactory. The lands above inscribed are Hazalelepool Kalama's; she has permission to take them before the Land Commission. KAMEHANEHA. [LE.]

Palace, 11 Feb., 1848.

March, 1848, the King's suzerainty over the lands held by his Chiefs and other individuals was at an end, and the list of lands in which the interests of the Chiefs and lesser Konohikis had

The Muhele being completed on the 7th of districts than Kopiaupoko, or on other Islands I have said there were other Iluinas in these Ahupusas of Kailua and Kaneobe which were "maheled" to various Chiefs and Claimants.

thus been released, became the King's. But the Mahele, as Judge Robertson expresse it in the decision above referred to, granted the lands to the Chiefs "by freehold title, certified to the Land Commission for its formal award, capable of being converted into an slindial title by payment to the government of a commutation to be fixed in Privy Council.' It appeared to the King that the lands thus

released to him might be subjected to commuta-To quote again from the decision in 2 Haw. "The records of the discussion is Council show plainly His Mujesty's auxious de-sire to free his lands from the burden of being considered public domain, and also his wish to enjoy complete control over his own property.

Moved by these considerations and by a de-sire to promote the interests of his kingdom, he proceeded with an exalted liberality to set apart for the use of the government the larger portion of his Royal Domain, reserving to himself what deemed a reasonable amount of land as his own Estate.

"To effect that object he signed and sealed on the 8th March, 1848, two instrument contained in the Mahele Book. The first is as follows: "Know all men by these presents that I, Ka-

mehamena III. by the Grace of God, King of these Hawaiian Islands, have given this day of my own free will, and have made over and set apart forever to the Chiefs and people the larger part of my royal land, for the use and benefit of the Hawaiian Government; therefore, by this instrument, I hereby retain, or reserve (hookoe in Hawaiian) for myself, my heirs and successors forever, my lands inscribed on pages 178, 182 184, 186, 190, 194, 200, 204, 206, 210, 212, 214, 216 218, 220, 222 of this book, these lunds are set apart (or separated off) for me, my heirs and successors forever, as my own property exclu-

Signed with my name and my seal at Hale Alii this 8th day of March, 1848. KAMRHAMEHA. [L.S.]

Signed and sealed in presence of Keoni Ana, G. P. Judd. I mark this deed "A."

On the opposite page of the Mahele Book the following deed is inscribed, having the same date: "Know all men by these presents that I, Ka-mehameha III., by the Grace of God, King of these Hawaiian Islands, do hereby give, make over and set apart forever, to the Chiefs and people of my kingdom, and convey all my right, party holding an Award or Patent for an Ahudated 1st of May, 1871, of all the right, title, title and interest in the lands situated here in the and interest which the late Queen Kalama posboth inclusive, of this book, to have and to hold to my Chiefs and people forever. These lands are to be in the perpetual keeping of the Legisabove recited chain of title, Queen Kalama was lative Council (Nobles and Representatives), or in that of the Superintendents of said lands, appointed by them from time to time, and shall be sanaged, leased, or sold, in accordance with the will of said Nobles and Representatives. for the consequence she, and not the Complainant is senefit of the Hawaiian Government and to pro-

mote the dignity of the Hawaiian Crown." Signed and sealed, etc.

This deed I mark " B." This deed was executed the same day as the first one above mentioned marked "A," and preceded it, as is evident from the affusion to it in the deed "A." This last deed (B) is the conrevance by the King to the Government of the Government lands. Strictly speaking, the deed in rked "A" was not necessary; for, the King being as Sovereign, the owner of all the lands of the kingdom, and the Chlefs and Konohikis hav-ing by the Mabele released their feudatory rights deeded to the Government a portion of these But for greater certainty the "deed of reserva-tion," so called, was made. His title to these lands was complete without this deed of reservaother sufficiently definite mode, will be held to tion, for the outstanding claims in them were released to him by the Mahele.

Oq the 7th of June, 1848, the Legislature

mehameha IV., this act is called merely confirma-tory of the King's previous action. "The Legisratify what had already been done by the King in Privy Council, and hereby bind the Nation to

not date from this act of the Legislature. On page 220 of the "Mahele Book," the Ili- al Patents to himself for them. Here it becomes necessary to examine the scribed among the King's lands reserved. In nature of the land tenures in this kingdom and the second volume of the "Mahele Book," as it particularly the nature of the great Mabele of is called, which is however but a summary or Index of the former, the Principles adoption of the lands of this kingdom arranged by measure of area, for Ahapuasis vary exceedingly Islands and Districts, I find on page 98

> On page 100, Halekou.
> Kanalekaulia
> Kuou
>
> Kanalekaulia
> Kuou
>
> Kananouluiwi
>
> Kaluapuhi...

I do not place much importance upon this as it was but an Index compiled in the Interior Office and is not conclusive as to title, but it has value as showing the views of those in office at I find also by reference to the Mahele Book that the Ilis of "Kawailoa" and "Waikalua" were released to the King by Princess V. Kamamalu, 27 January, 1848; "Kahalekauwila," by J. A. Kauwa, 11 Feb, 1848, "Keanhala," by Chas. Kanaios. 28 January, 1848; "Kaluapuhi," by Kabona, 2 Feb., 1848; "Halekoa" by Kapu 4 Feb., 1848; "Kanohohuluiwi' by Puhala-hua, Feb. 3, 1848, and "Kuon," by Kahoohanobano 10 Feb. 1848.

From all this I draw the following inferences : That the Iliainss in question were at the time of the mahele known and treated as distinct from the Ahupuan. They had had different owners or Konohikis under the King, and these Ilis, by virtue of the maheles of the Konobikis, who r leased their rights in them to the King, and by virtue of the King's deeds of the 8th of March 1848, in which the private lands of the King were separated from those of the Government,these Ilis thus became absolutely the King'ssubject to the rights of tenants (Kuleana men) whose titles were being settled by the Land

The Mahele Book shows that the King reserved "Lands" of all denominations, not Ahupuass merely, but "Iliainas" as well. Iliainas were treated as separate from the Aliapuas. In one case, "Warluku," Mani, all the Ilis were 'maheled" to different Konobikis and only the Abupua remained to the King.
In the Abupuans of "Kailua" and "Kaneobe,"

numbers of Ilis were "muhaled" or released to various Chiefs and Konohikis by the usual form of Mabele Certificate, which directed the parties to "the Land Commission for formal award of

Now although these maheles were executed day after day until the work was completed, it was because it was too great a task to be all completed in one day, and they might well have all been dated on one and the same day.—It was

all one act.—None of the maheles by the King to any Chief could claim by virtue of its earlier date any priority or superiority of title over the mahele by any Chief to the King. The whole work was one scheme; one par

was contemporaneous with every other part. The mahele executed by the King to Queen Kalama of the Abaptanas of Kailus and Kausohe, surrendered these lands to her ;- the various mabeles executed by the Princess Kamamalu, Chas. Kanama, and others, of the Iliamas in

question released all their rights in them to the King, who already held the superior title in them as sovereign. I cannot see therefore, how, in any manner, the deed of the King of March 8th, 1848 formally reserving there liminas to himself—(which we have seen was unnecessary) or the Act of June 7th, 1848—(which was merely confirmatory) affected his title to those His in the least. How then could these deeds or the Act of the Legislature referred to, be construed to revoke or dised in this list.

sion and received their awards for them. If the mahele of the King of the Ahupunas of Kalina and Kaneohe swept off and included in them the King's Ilminas which were within the limits of these Ahupuaus, -the same reasoning would sweep off, in the grant of the Ahupuaus, those other Iliainus, also within the limits of these Ahapaaas, which were "maheled" to those other The subsequent awards of the Land Commis-

They took these mabeles to the Land Commis-

sion for the Higgs of the other chiefs would make their case no stronger as against the effect of the muhele of the Ahupura to the Queen. The King could not perfect his own already

perfect title to his own Hinings. No one would seriously contend that the King was obliged to go to the Land Commission for Awards or Patents of his own lands, even for commutation purposes, when we bear in mind that he had surrendered to the Government by far the greater proportion of the lands that remained which extinguished completely the Government right to commutation in what was left.

One perfect title is as good as any other per-The King's title to the Iliainas which are sub-

ject of this suit, was perfect. So were also the title of those Chiefs who had Hainas in the same Abupuas "maheled" to them, perfect so far as the King was concerned :- They had, of course, to follow the mahele up with an award and were entitled to Royal, Patents on paying the Government Commutation. When I say that both these clases of titles

are "perfect," I must always be understood as qualifying this by the statement that these mueles and subsequent awards were subject to the rights of native tenants. These tenants on taking out their Kuleanns, paid no commutation to the Government, for the holder of the award of the Ahupuan or Ilmina out of which ther were taken, settled for the whole Government Commutation. In the towns of Honoluly, Labaina and Hilo the awards of Kulesuas for Houselots were subject to commutation, there being no superior Lord or Chief over them whose Ahupass or Ili they were included in and whose commutation covered theirs. See principles adopted by the Lind Commission page 84, and Keelikolani vs. Robinson 2 Hawaiian R. 547

also Kanaina vs. Long 3 Haw.—
I here quote from Keelikolani vs. Robinson, as follows: "Under the general rule that the puan is the owner of all the land embraced within its boundaries, except such portions of it as have been awarded by the Land Commission to other persons, it is contended by Counsel for the Respondent that unless the Complainant shown that "Pakaka" was awarded by the Lami Commission to Leleiohoku or Pitt Kinau, the fee of that lot became vested in the Queen Dowager as a part of Waskahalulu, and that in now the owner of the right formerly possessed by Kulaimoku and Leleiohoka."——'In our opinion upon the Grant of Pakaka to Kalaimoka by Kashamana, which was the same as a grant by the King, it coased for ever to form a part of Waikahalalu, as held by the Konohiki. I apply this reasoning to the case before me in

Upon the execution of the releases by Princess Kamamalo, Chus. Kanaina and the others (by their makeles) of their interests in the Hiamas in question, "they ceased forever to form a part of the Ahupuans as held by the Konohiki. And our case is even stronger, for the grant of in a large portion of them by name, when he Pakaka by Kashumana to Kalaimoku initiated his title-the mabeles of Princess Kamamala lands, what remained were, of course, his own. and the others but released to the King an outstanding claim in lands in which he already held

title as sovereign.
I do not deem it necessary to discuss the quesion here, whether the Land Commission had the legal authority to put into the Land Awards issued by them, the condition of forfeiture if the remained of his own lands, after surrendering liberally to his Chiefs, Konolukis and Govern No one would seriously contend that the ment. Certainly the King's title to his lands does King should have procured awards of his own lands from the Land Commission or signed Roy-

I think that erroneous opinions have some times as to what are "Ahupunas" and "Ilia." Ilis—other Ahupunas have no Ilis in them, as for instance Kualon and Waimanalo on this Is-

There are two kinds of His. One the Hi of the Abupuas, a mere subdivision of the Ahupuna for the convenience of the Chief holding the Ahupuna,—as for instance the Ilis of Laure

The other class were the "Ili Kupono" (shortened into "lii Ku.") These were independent of the Ahupuas, nor did they pay general tribute

In some cases these Blainas are very numerous, absorbing the larger part of the Ahapuna. A well known case is the Abupuan of "Waimen" Hawati, of which the Ilis of "Waikoloa" and Paukapa" form about nine tenths.

any Ahupuaa-as for instance the lies mentioned in pages 400 and 401 of the Civil Code, and se apart as "Fort Lands" for the support of the soldiers. They are mentioned as "lis of Hogolulu." and yet there is no Ahupusa of "Hono-lulu." which is but a name for the locality—and I believe there are no lands known as the Aha-punas of Manoa, Makiki, Kapalama, or Waikiki, though there are numerous Ilis and Kuleanas awarded under these names, which I understand to be names of localities. It may be however that as all the territory of these lands was ab-

The Ilis in question in this suit are not dis-tinctly named "Ili Kaponos," this name not being preserved in the mahele; but all the His that were recognized and treated in the mahele and awarded by the Commission were undoubtedly "Hi Kuponos." This name was dropped, for when separated from the Ahupusa by makele and subsequent award, its necessity was gone. All

The inquiry just gone late is pertinent to the case before us, as showing that the "Illama" was a well known division of land with its own identity, and I cannot see how the mahele or the award of the Abupuas of Kailus carried with it an Ili having its own distinct identity-unless clearly expressed or manifestly intended, and it is not so expressed, for the mahele calls for the

"Ahapusa" only.
All the Acts of the King repel the idea that he so intended it. He preserved the separate identity of these His by receiving specific releases for them in the mahele, naming them in his deed of reservation which was confirmed by Act of the Legislature.
Having satisfied myself that the title of the

"History" in question remained in the King. notwithstanding the mahele and award of the "Ahupuaa" to Queen Kalama, the question remains;—Did the devise under the Will of Kamehameha III to the Queen carry these Ilis to

fee, in tien of her dower, if she accepts it.-Kois Ahupusa Puna Hawaii Kapalashice. Kois Kois Kois Anatopusa Ili no Waimea Kohala Anachoomala.

affirm the mahele of the Ahupuans of Kailua or Kansohe to Queen Kalma? The King's deed of March Sth. 1848, did not affect these Ahupuans in the least,—it had no reference to them,

But the King davises the "Ahupuans" of "Kailus" and "Kaneobe" and there are no words from which it can be deduced that anything more than those "Ahupuaus" was intended the King. These "lands" were devised by himthe list contains Ilis as well as Ahupuans-and the Ilis in question in this suit are not menuon

As to possession as the basis for a title by prescription; the title to these His having bee found to be in the King Kamehameha III at the time of his death, it passed by force of his Will to Kamehameha IV., and it has been settled by the decision often referred to in this opinion, in the Estate of K. IV that the title in that King's lands passed to Kamehameha V his successor, and is now in the Commissioners of Crown Lands, the Defendants at bar.

Adverse possession of these Iha could have been commenced by Kalama from the death of her husband the King, December 15, 1854, or as soon as his coverture ceased.

I understand that there is no prescription

against the State (see Kahoomana vs. Minister o Interior 3 Haw. ----), but the King as an individual cannot claim this immunity :- "Nullum tempus occurrit regi ' means the King as repres the Government and as Guardian of the lands of the State.

The evidence as to actual possession cupancy of these His was not laid fully before ne. except in the case of the Ili of "Keanhala" for which a Lease of Kamehameha IV is shown. duting in 1856, which would rebut the claim of Plaintiff's title by adverse possession to this

If Plaintiff can show that Queeen Kalama or her heirs or assigns have had, during twenty years last past, adverse, uninterrupted and un-disputed possession of any or all of the Ills in question, this would be a complete bar to an ac-

ion by the Defendants to recover them.

Having arrived at the above conclusions of law and fact on the points submitted to me, either party is now at liberty to move the Court further as to them may seem best. A. FRANCIS JUDD.

Justice Supreme Court. Honolula, March 21st, 1877. Just Received from New York

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those that may hereafter accrue.

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punas in the least,—it had no reference to them, ander Libolibo (Kamehameha IV) his residuary punas in the least,—it had no reference to them, any more than if the Iliainas reserved were situed any more than if the Iliainas reserved were situed any more than if the Iliainas reserved were situed any the mahele and her awards had been at the second and the second an

passed "An Act relating to the lands of His Ma- Government Commutation was not settled withjesty the King and of the Government. This in thirty years, for we are considering the King's act will be found in the Civil Code, p.p. 374 to title to the Iliainas in question. He had dele-102, both inclusive.

In the case of the Estate of His Majesty Ka
Commission to settle his rights as the Chief Exauthority to the Land ecutive of the Government in other lands with the Claimants, but he did not go to the Commislative Council simply intended by that act to sion for an adjudication of his own titles in what

> An Ahupuna has been called the "unit" of as to size. Many Ahupunas are divided in o

> and Waimanalo in the Ahapuna of Honouliuli. The Konohikis of such Iliainas as these brought their revenues to the Chief holding the Ahu

> There are some His that do not seem to be in

sorbed by the Ilis and the Kuleanas, there was nothing left to be applied for or granted.

other Ilis went with the Ahapusa in which they were situated, and were not further distinguished.

Article fourth of the Will is as follows: I bereby give and devise to my Queen Huzuleleponi Kapakuhaili the lands mentioned below, in

Americomals Augusa Konisa Waipio Ahupusa Hamakus Ka ba, dc, de ili no walluku Maini Wakalainin Homelon Kolaspeko Ahupusa Koolaspeko

adjudicated by the Land Commission. King's devise, however, confirmed her title and removed all question as to the validity of the mahele or award to his Queen.

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